

## APPEAL NO. 92143

On March 13, 1991, a contested case hearing was held at \_\_\_\_\_, Texas, with (hearing officer) presiding as hearing officer. She determined that the respondent injured herself in the course and scope of her employment and is entitled to medical and income benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., arts. 8308-1.01 *et seq* (Vernon Supp 1992) (1989 Act). The appellant urges the respondent has not met her burden of proof and that the evidence shows that the respondent was not injured while in the course and scope of her employment.

### DECISION

Finding the decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, we affirm. Texas Workers' Compensation Commission Appeal No. 91102 (Docket No. FW-A-129124-01-CC-FW31) decided January 22, 1992.

Clearly, the key matter in this case was the believability of the respondent. As the sole judge of the weight and credibility of the evidence (Article 8308-6.34(e), 1989 Act), the hearing officer obviously believed her rendition of the events surround her back injury.

Succinctly, the respondent testified that on (date of injury), while working at (employer) and performing assigned duties of stacking bundles of bags weighing approximately 60 to 80 pounds, she experienced a "pop" in her back and experienced pain. She states she did not tell anyone and worked the remainder of the day. The reason she did not tell anyone was because she "was afraid because she had a lot of problems in the store." She testified that she was suspended from work on October 11th for a repeated incident unrelated to this claim. She states that on October 12th she visited the store manager, Mr. M, and told him about the injury and asked about insurance. She testified that Mr. M advised her to see her union representative about the matter. She claims she visited the union representative on October 14th and that during the visit the union representative called Mr. M and discussed the injury. On October 18, 1991, the respondent was terminated from employment. She later saw a medical doctor who wanted to run further tests but never did because the injury was controverted by the appellant. The doctor took the respondent off work.

Also called as witnesses were the respondent's supervisor (LF) and Mr. M. Both LF and Mr. M denied that the respondent ever reported any injury to them and stated they were unaware of any injury until October 29th when the union representative called and mentioned that the respondent was claiming she was injured on the job. LF did

acknowledge that she had assigned the bag stacking duties to the respondent on (date of injury) and told her how to do it. LF observed her doing the work but did not see any indication of any injury and denied the respondent said anything about being injured. Mr. M stated the first he knew anything about the alleged injury was when he was called by the union representative on October 29th. He further testified that the respondent came to his office on October 12th but only discussed the suspension from work and did not mention anything about an injury. He stated the employer's policy was that an injury was to be reported immediately regardless of how minor.

As indicated, this case hinged on the credibility assessment by the hearing officer. It was for the hearing officer to evaluate and weigh the testimony of the witnesses. She could properly believe one witness and disbelieve others whose testimony was in conflict with the one. Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). Although there may have been evidence from which inferences different from those drawn by the hearing officer could reasonably have been made, this is not reason, in and of itself, to reverse as long as there is probative evidence to support the decision of the hearing officer. See Garza v. Commercial Insurance Co. of Newark N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 92062 (Docket No. TY-91-123256-01-CC-TY41) decided April 2, 1992.

The decision is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge